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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,501	02/25/2002	David E. Albrecht	505-05	1167
7590	12/23/2003		EXAMINER	
William H. Eilberg 420 Old York Road Jenkintown, PA 19046			BOCHNA, DAVID	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/082,501	ALBRECHT, DAVID E.
	Examiner David E. Bochna	Art Unit 3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 October 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 28-38, 40 and 41 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 36-38, 40 and 41 is/are allowed.

6) Claim(s) 28-35 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 28-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Wereley.

In regard to claim 28, Wereley discloses an apparatus 13 for blocking fluid flow in a conduit comprising:

a one-piece plate, the plate having a flat portion 15 having a plurality of bolt holes, and a domed portion 13 connected directly to the flat portion, the domed portion comprising less than a full hemisphere,

the domed portion defining a surface which is convex and could be placed over a pipe so that the convex surface is in a direction opposite the direction of fluid flow in a conduit (the recitation “in a direction opposite the direction of fluid flow in a conduit to be blocked” is considered an intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963),

the flat portion 15 defining a plane which is generally perpendicular to the direction of

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fluid flow,

wherein the domed portion 13 is substantially rigid, non-rupturable and non-perforated.

In regard to claim 29, there are four boltholes disposed symmetrically around the domed portion.

In regard to claim 30, the domed portion 13 extends across a generally circular region 11 which matches a port to be blocked.

In regard to claim 31, the domed portion 13 transitions smoothly from a flat surface 15 of the plate to an apex of the domed portion.

3. Claims 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller.

In regard to claim 32, Lambert discloses an apparatus 10 ("for providing a controlled flow of fluid from a first fluid component to a second fluid component" is considered an intended use of the claimed invention (the orifice plate) and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963),  
, comprising:

a one-piece orifice plate 10 adapted to be held in abutment between the first 17 and second 15 fluid components, the orifice plate including a domed portion 19 and a plurality of bolt holes 13,

the domed portion defining a surface which is convex in a direction of the first

component 17, the convex surface of the domed portion 19 would be substantially unobstructed to a flow of fluid from the first component (the recitation "the domed portion being substantially unobstructed to a flow of fluid from said first component" is given little patentable weight because only the apparatus or the "orifice plate" is being claimed, not the combination of the apparatus and the first and second fluid component, and because the convex surface of the domed portion would be substantially unobstructed to a flow of fluid from any one first component when it is abutment between a first and second fluid component)

wherein the domed portion 19 includes an orifice 20.

In regard to claim 34, the domed portion defines a central region, the orifice 20 is located in the central region of the domed portion 19.

In regard to claim 35, the domed portion 19 transitions smoothly from a flat surface 11 of the orifice plate to an apex of the domed portion.

#### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller. Miller discloses two bolt holes 13, but not four. However, it would have been obvious to a person having ordinary skill in the art to add additional bolt holes to the orifice plate because duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

***Allowable Subject Matter***

6. Claims 36-38 and 40-41 are allowed.

***Response to Arguments***

7. Applicant's arguments with respect to claims 28-35 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

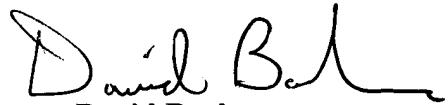
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

^9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Bochna whose telephone number is (703) 306-9040. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (703) 308-1159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



**David Bochna  
Primary Examiner  
Art Unit 3679  
December 18, 2003**